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## 9 Labor Policies

Chapter 9 of the *Purchasing Manual* (PM) sets forth policies regarding labor. The PM should be relied upon for any labor questions or problems that arise in connection with design or construction purchasing.

### 9.1 General 🕮

### 9.2 Convict Labor

# 9.3 Contract Work Hours and Safety Standards Act

### 9.4 Construction Contracts and Lease Agreements

Regarding 9.4, see for construction contracts; PM Part for A/E contracts.

### 9.4.1 **Definitions**

### 9.4.2 Labor Standards for Construction

Also see 9.4.5.

### 9.4.2.a Davis-Bacon Act

The Davis-Bacon Act applies to every Postal Service contract for construction, alteration, and/or repair, including painting and decorating: (1) of a Postal Service building or property if the contract is over \$2,000, and (2) of a Postal Service leased building or site if the lease has more than 6,500 net interior square feet. For administration and enforcement of Davis-Bacon provisions, see 9.4.5 and PM 9.4.5.

### 9.4.3 Labor Standards for Leases

### 9.4.3.a Davis-Bacon Act

Advise the lessor to notify the Postal Service if the lessor plans to have construction work performed that invokes Davis-Bacon Act obligations. Obtain wage determinations for the lessor at the address in 9.4.5.c.2 before the lessor enters into a contract for the work. Help lessor obtain correct or additional classifications in accordance with 9.4.5.c.9.

Advise lessor that, in accordance with the lease agreement, the lessor must submit weekly payrolls to the contracting officer. Check payrolls for Davis-Bacon Act violations such as underpayments or incorrect classifications. If the contracting officer determines that violations are occurring that the lessor fails to correct, rent should be withheld in accordance with the lease agreement. For administration and enforcement of Davis-Bacon provisions, see 9.4.5 and PM 9.4.5.

### 9.4.4 Clauses

Include Clause 9-3, *Davis-Bacon Act*, in covered construction contracts. Leases over 6,500 interior square feet should already have a clause in the lease agreement that describes the lessor's Davis-Bacon Act obligations.

### 9.4.5 Administration and Enforcement

### 9.4.5.a General

#### 9.4.5.a-10 Preconstruction Conference

At the preconstruction conference, advise the contractor that:

- a. The Postal Service intends to monitor the contractor's compliance with labor requirements by examining the contractor's certified payrolls and conducting interviews and on-the-job checks.
- b. Violations can be prevented if all present at the preconstruction conference clearly understand the contract labor provisions.
- c. Violations may result in the Postal Service withholding payments until the problems are corrected, and that further penalties, including debarment, may be imposed by the Department of Labor.

### 9.4.5.b Applicability

### 9.4.5.c Wage Determinations

The Department of Labor establishes wage determinations. Wage determinations set the amount of wages workers should receive for the job. Take care when reviewing wage determinations as the can be difficult to read. The volumes published by the Department of Labor include an explanatory introduction. Direct questions regarding the interpretation of wage

determinations to the closest office of the Department of Labor, Wage and Hour Division.

#### 9.4.5.c.1 General Wage Determinations

Davis-Bacon Act wage determinations for each calendar year should be ordered no later than October 30 to ensure that contracting officers receive updated wage determinations when issued each January. Each periodic update the Department of Labor publishes contains Renewal Information, which describes how to order the wage determinations. If your office has a Billing Address Code, you may submit Standard Form 1 to the Government Printing Office, referencing the labor requisition number. An optional method is to order a subscription from:

THE SUPERINTENDENT OF DOCUMENTS US GOVERNMENT PRINTING OFFICE (GPO) WASHINGTON DC 20210-9371

GPO accepts written requests with a check or money order, or you may send a purchase order. Direct all inquiries to the Superintendent of Documents Order Desk.

#### 9.4.5.c.2 Project Wage Determinations

Project wage determinations should be requested when general wage determinations are not available. Obtain wage determinations in sufficient time to include them in the solicitation, normally 30 days prior to issuance. Obtain wage determinations through an online service or by submitting Standard Form 308 to the Department of Labor at the following address:

US DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS DIVISION
BRANCH OF CONSTRUCTION CONTRACT WAGE DETERMINATION
WASHINGTON DC 20210

#### 9.4.5.c.9 Additional Classifications

Occasionally, a contractor employs a worker in a job classification not listed in the wage determination. When this happens, the worker, the contractor, and the Postal Service, attempt to reach an agreement on the minimum wages and fringe benefits for that worker. This may require reclassification of the worker. The following factors must be met to justify a reclassification:

- a. The work performed by the classification requested is not performed by a classification in the wage determination.
- b. The classification is used in the area by the construction industry.
- c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

If an agreement regarding additional classifications is reached, incorporate it into the contract by contract modification. This modification is not a basis for a price increase or decrease. It is merely an agreement to allow the contractor to

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add the additional classification in return for its adherence to the agreed-upon minimum wages and fringe benefits.

The agreement regarding additional classifications must be reported to:

US DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
ADMINISTRATOR OF THE WAGE AND HOUR DIVISION
WASHINGTON DC 20210

The Administrator, or an authorized representative, approves, modifies, or disapproves every additional classification action. The contracting officer normally is notified within 30 days of the decision.

In the event agreement regarding additional classifications cannot be reached, the contracting officer must refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination.

The wage rate determined in accordance with these procedures, including fringe benefits where appropriate, must be paid to all workers performing work in the classification from the first day that work is performed in the classification.

### 9.4.5.d Subcontracts

### 9.4.5.e Payrolls and Compliance Statements

Obtain weekly certified payrolls from the contractor and its subcontractor(s). Immediately report any delay in furnishing the required payrolls, certificates, or statements to the contracting officer, who notifies the contractor of the problem. If the contractor does not take corrective action, the contracting officer advises, in writing, that the Postal Service may withhold portions of further payments under the contract until the delinquent payroll records are provided. Exhibit 9.4.5.e is a sample letter requesting compliance with labor standards. Spot check the weekly payroll for labor violations. Report any violation to the Department of Labor in accordance with PM 9.4.5.g.

### 9.4.5.f Investigations

#### 9.4.5.f-10 Interviewing Workers

Interview workers at the site to ensure proper classification and correct wages. Check the responses of employees interviewed against the payroll. Ordinarily it is not necessary to make a detailed audit of the payrolls or to conduct extensive interviews. General familiarity with the payroll and time sheets, progress reports, contractors' apprenticeship agreements and similar data, together with oral inquiries of employees, is normally sufficient to develop information as to whether there is compliance with the labor standards provisions. Keep all interview material confidential.

#### 9.4.5.f-20 Checking Worker Classifications

Obtain appropriate apprentice and trainee certificates, then copy and file them. Check for the correctness of classifications. Determine whether there is a disproportionate employment of laborers, apprentices, or trainees in the contractor's registered programs.

### 9.4.5.g Enforcement Reports

Substantial sums of money are saved if violations are found and corrected in the early stages of construction. Discrepancies, other than routine errors, call for prompt action by field personnel inspecting the construction. Field personnel must report any potential violation, and provide sufficient data regarding its nature and extent. This data enables the contracting officer to determine whether further investigation and enforcement efforts are warranted.

### 9.4.5.h Semiannual Enforcement Reports

### 9.4.5.i Suspensions and Deductions of Contract Payments

#### 9.4.5.i-10 Decision by Department of Labor

Report violations to the Department of Labor pursuant to PM 9.4.5.g. Obtain a written determination from the Department of Labor which indicates whether the contractor has failed to pay the correct wages and, if so, that the Department will make restitution to the affected workers from the withheld funds if the contractor does not agree to make the payments. Send a letter to the contractor notifying it that the Postal Service will send withheld funds to the Department of Labor for disbursements to workers to correct the specific violations. A similar letter should be sent to any surety unless the surety already has agreed to the payments in writing.

# 9.4.5.i-20 Form 4211-B, Facility and Fixed Mechanism Project Contract Payment Authorization

Prepare Form 4211-B (Exhibit 6.4.3.f-11, chapter 6A) in a manner similar to a progress payment except that, for Item 4 in the Progress Payment Summary, insert "Labor Violations" and write the amount of Davis-Bacon Act and overtime disbursements only. Note that all financial information — project authorization number, contract number, account number, and index code (1 BC) — will remain the same, as if payment were being made to the contractor. Do not include any Department of Labor liquidated damages or extra retainage. A copy of Form 4211-B is sent to the contractor with the letter of notification of withheld funds. The payee on Form 4211-B is the Department of Labor.

### 9.4.5.j Restitution

The contracting officer must transmit the check to the local Department of Labor office, which makes disbursements and sends acknowledgments to the contracting officer for insertion in the project file.

### 9.4.5.k Contract Termination

### 9.4.5.1 Liquidated Damages

### 9.5 Walsh-Healey Public Contracts Act 🗵

9.6	Fair Labor Standards Act of 1938 🕮			
9.7	Equal Employment Opportunity 🕮			
9.8	Service Contract Act 🗵			
	Demolition contracts where future construction is not contemplated by the Postal Service are covered by the Service Contract Act; see PM.			
9.9	Employment of the Handicapped			
0.40				
9.10	Veterans 🕮			

UNITED STATES POSTAL SERVICE
Contractor's Name Contractor's Address
Subj: Contract No: Project Name:
Dear:
Please refer to the Payrolls and Basic Records paragraph of the labor standards provisions of the referenced contract that requires you to submit weekly payrolls for both the prime contractor and all subcontractors to the contracting officer. Submission of your payrolls is not up-to-date.
In accordance with the Withholding of Funds paragraph of the labor standards provisions, the contracting officer may withhold funds to cover the cost of contractor labor for which payrolls have not been submitted or may suspend further payments until proper payroll records are submitted.
We ask that you submit payroll records and keep the submission of the records up to date. Should submission of your payroll records not be up to date by (date), we will withhold funds from progress payments after this date to cover the missing payrolls.
To avoid delaying progress payments for work accomplished, your expeditious action to submit the overdue payroll records is requested. Please feel free to contact this office if you have any questions.
Very truly yours,
Contracting Officer
cc: Project Manager A/E/CMSSC
Mgr., Purchasing and Materials Service Center

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